A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Civil revision No. 123/2005

SINGLE BENCH: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

APPLICANTS (LANDLORDS)	:	1.	Smt. Fatima Sultana, Wd/o Late Mohammad Ali, aged about 60 years.
		2.	Ku. Reshma Sultana, D/o Late Mohammed Ali, Aged about 27 years
		3.	Dr. Mumtaj Ali S/o Late Mohammed Ali, aged about 25 years.
		4.	Ku. Rumana Sultana, D/o Late Mohammed Ali, aged about 22 years, All R/o Near Itwari Bazar, Marathapara, Dhamtari, Distt. Dhamtari (C.G.)
	Versus		
RESPONDENT (TENANT)	:	1.	Mujaffar Ali Asraf, S/o Wahab Ali, Aged about 45 yars, R/o Near Garib Nawaj Masjid, Risaipara Ward, Dhamtari, Tah. & Distt. Dhamtari (C.G.)

Present :Shri R.S. Patel, Counsel for the applicants.
Shri Sanjay Patel, counsel for non-applicant.

ORAL ORDER
(Passed on 9th March, 2007)

The following order of the Court was passed by Dilip Raosaheb Deshmukh, J.

Heard.

2. It is not in dispute that Mohammed Ali, the husband of the applicant No. 1 Smt. Fatima Sultana, since retired from service, had filed an application under Section 23-A of the Chhattisgarh Accommodation Control Act (hereinafter referred as the "Act") before the Rent Controlling Authority.,Dhamtari (hereinafter referred to as the R.C.A.) for eviction of the tenant on the ground of bonafide requirement for residence. During the pendency of the proceedings before the R.C.A., Mohammed Ali died and the applicant Smt. Fatima Sultana and her two daughters and a son were impleaded as Legal Representatives of Mohammed Ali. By the impugned order, the learned R.C.A. has dismissed the application under Section 23-A of the Act on the ground that after the death of Mohammed Ali, no cause of action survived in favour of the widow Fatima Sultana and her daughters and son.

3. Shri R.S.Patel, learned counsel for the applicant submitted that the impugned order is perverse since a widow falls under the special category of landlord mentioned in Section-23(J) of the Act and was entitled to pursue the proceedings on the ground of bonafide requirement for residence, for her own self as also for her daughters and son. Reliance was placed on **Harbans Singh Vs. Smt. Margrat G. Bhngardive** reported in **1990-M.P.L.J.-112.**

3. Shri Sanjay Patel, learned counsel for non-applicant does not oppose this Civil Revision and conceded that the order passed by the R.C.A. was not inconformity with law.

4. Having heard the rival contentions, I am of the considered opinion that the impugned order is perverse since a widow clearly falls within the definition of Landlord under Section 23-J of the Act and can pursue the proceedings before the R.C.A. on the ground of her bonafide requirement for residence. In **Dhanna lal Vs. Kalawatibai and others AIR-2002-Supreme Court-2572,** it was further held by Hon'ble the Supreme Court that :

> "Where a widow who belongs to classified category of landlord under Section-23-J along with her two major sons arrayed as co-plaintiffs filed eviction proceedings before Rent Controlling Authority. on ground of bonafide requirement of major sons who required suit premises for starting their business, such requirement clearly falling within purview of Section-23-A(b), the proceedings initiated before Rent Controlling Authority. is maintainable. Merely because major sons/co-owners do not fall within category of 'landlord' as defined by S-23-J it cannot be said that special procedure provided by S-23-A of Act is not available and that eviction proceedings initiated before Rent Controlling Authority suffer from want of jurisdictional error."

In that view of the matter, this Civil Revision is allowed. The impugned order is set aside. The R.C.A., Dhamtari shall decide the application under Section 23-A of the Act in accordance with law. It is directed that the parties shall appear before the R.C.A., Dhamtari on 3.4.2007. No further notice shall be required.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr